
UNITED STATES OF AMERICA

v.

DAVID M. HICKS

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) **Prosecution Reply: Prosecution
Challenge for Cause Submission**
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) 13 September 2004
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The Prosecution in the case of the *United States v. David M. Hicks* replies to the Defense Response to our Challenge for Cause Submission as follows:

1. The Defense misunderstands our position regarding their challenges for cause of Colonel Brownback and Lieutenant Colonel **NAME REDACTED**. We did not challenge them; they did, and as the moving party, they retain the burden of persuasion to convince the Appointing Authority that they should be removed for cause.
2. Regarding Lieutenant Colonel **NAME REDACTED**, the Prosecution does not concede that his removal is necessary under Commission Law; we merely lodged no objection to the Defense challenge. Not objecting does not shift the burden to us, so we are under no obligation to explain why we chose to object to the removal of one member but not the other.
3. Hence, the merits of whether Colonel **NAME REDACTED** should be removed must be considered individually, and the attempt to compare him to a member to whose removal we did not object is unhelpful. Specifically considering Colonel **NAME REDACTED**, the record reveals that he would, in fact, make a fair and impartial member. The attacks of September 11, 2001 affected millions, if not all, Americans. We should be loathe to disqualify an otherwise supremely well-qualified officer simply because he knew or worked with a victim of those brutal attacks or visited the site of one of the crime scenes in the weeks following the attacks.

//Signed//

NAME REDACTED

Lieutenant Colonel, U.S. Marine Corps
Prosecutor